



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket No. USCG-2012-0545

RIN 1625-AA00

Safety Zone; Port of Dutch Harbor; Dutch Harbor, Alaska

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard establishes temporary safety zones in the navigable waters, from surface to seabed, of the Port of Dutch Harbor, Alaska, and the adjacent U.S. territorial sea from June 15, 2012, through July 31, 2012. The temporary safety zones will encompass the navigable waters within a 25-yard radius of moored or anchored Shell offshore exploration or support vessels, and the navigable waters within a 100-yard radius of underway Shell offshore exploration or support vessels. The purpose of the safety zones is to protect persons and vessels during an unusually high volume of vessel traffic in

the Port of Dutch Harbor, Alaska, and the adjacent territorial sea due to additional vessel traffic associated with exploratory drilling operations in the Chukchi and Beaufort seas during the summer of 2012.

DATES: The temporary safety zones become effective on June 15, 2012, and terminate on August 1, 2012, unless sooner terminated by the Captain of the Port.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0545 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0545 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail CDR Adam Tyndale, U.S. Coast Guard, Sector Anchorage Response Department; telephone 907-271-6723, Adam.J.Tyndale@uscg.mil. If you have questions on viewing or

submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because Shell vessel operations in the Port of Dutch Harbor will begin within 15 days and the safety zone is a necessary measure to ensure safety of life and property, and the protection of the flow of commerce.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register because immediate action is needed to minimize potential danger to the public during the period of time when there will be unusually high

vessel traffic in the Port of Dutch Harbor and the adjacent territorial sea, and the event is scheduled to occur in less than 30 days.

Basis and Purpose

The legal basis for the rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Public Law 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorizes the Coast Guard to define regulatory safety zones.

Based on the expectation of increased maritime traffic due to the anticipated arrival of approximately twenty (20) vessels affiliated with planned offshore drilling operations in the Chukchi and Beaufort Seas during a period of time that the Port of Dutch Harbor normally experiences increased vessel traffic, the Coast Guard is establishing temporary safety zones to ensure the safe transit of vessels within the navigable waters, from surface to the seabed, of the Port of Dutch Harbor and adjacent waters extending seaward to the limits of the territorial sea.

The purpose of the established temporary safety zones is to facilitate safe navigation and protect vessels from hazards caused by increased volume of vessel traffic, including hazards

that may be intentionally created, in the Port of Dutch Harbor, Broad Bay or adjacent navigable waters encompassed within the area from Cape Cheerful at 54-12.000 N 166-38.000 W north to the limits of the U.S. territorial sea, and from Princess Head at 53-59.000 N 166-25.900 W to the limits of the U.S. territorial sea.

Discussion of Rule

The Coast Guard is establishing safety zones in the navigable waters, from surface to seabed, within a 25-yard radius of moored or anchored Shell offshore exploration or support vessels, and the navigable waters, from surface to seabed, within a 100-yard radius of underway Shell offshore exploration or support vessels in the Port of Dutch Harbor, Alaska, and the adjacent U.S. territorial sea from June 15, 2012, through July 31, 2012. The purpose of the safety zones is to protect persons and vessels during an unusually high volume of vessel traffic in the Port of Dutch Harbor, Alaska.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The rule is not a significant regulatory action due to the minimal impact this will have on standard vessel operations within the Port of Dutch Harbor because of the limited area affected and the limited duration of the rule. The safety zones are also designed to allow vessels transiting through the area to safely travel around the safety zones without incurring additional cost or delay.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit through or anchor within the Port of Dutch Harbor or adjacent waters, or transit through the waters in the near vicinity of the Port of Dutch Harbor from June 15, 2012 through July 31, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be effective from June 15, 2012 through July 31, 2012, and is limited only to waters, from surface to seabed, within 25 yards of the support vessel if the support vessel is moored or at anchor, and 100 yards if the support vessel is in transit.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule will not call for the collection of new information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not

designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the

National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph 34(g), of the Instruction. This rule involves establishing regulations for safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 46 U.S.C. Chapter 701, § 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0171.1.

2. Add § 165.T17-0545 to read as follows:

§ 165.T17-0545 Safety Zone; Port of Dutch Harbor; Dutch Harbor,
Alaska.

(a) Location. The following areas are safety zones:

(1) All navigable waters, from the surface to the seabed, within a 25-yard radius of moored or anchored offshore exploration or support vessel, as identified in paragraph (a)(2) of this section, or within a 100-yard radius of any underway offshore exploration or support vessel, as identified in paragraph (a)(2) of this section, located within the Port of Dutch Harbor, Broad Bay or adjacent navigable waters encompassed within the area from Cape Cheerful at 54-12.000 N 166-38.000 W north to the limits of the U.S. territorial sea, and from Princess Head at 53-59.000 N 166-25.900 W north to the limits of the U.S. territorial sea.

(2) The offshore exploration and support vessels to which safety zones apply are as follows: NORDICA, FENNICA, AIVIQ, TOR VIKING, HARVEY EXPLORER, HARVEY SPIRIT, SISUAQ, AFFINITY, the Barge TUUQ, LAUREN FOSS, ARCTIC SEAL, NANUQ, KLAMATH, GUARDSMAN, ENDEAVOR, OLIK TOK, CORBIN FOSS, ARCTIC CHALLENGER, NOBLE DISCOVERER, and KULLUK.

(b) Effective date. The temporary safety zones become effective on June 15, 2012, and terminate on August 1, 2012, unless sooner terminated by the Captain of the Port.

(c) Regulations. The general regulations governing safety zones contained in § 165.23 apply to all vessels operating within the area described in paragraph (a) of this section.

(1) If a non-exploration or support vessel is moored or anchored and an offshore exploration or support vessel transits near them such that it places the moored or anchored vessel within the 100-yard safety zone described in paragraph (a), the moored or anchored vessel must remain stationary until the offshore exploration or support vessel maneuvers to a distance exceeding the 100-yard safety zone.

(2) All persons and vessels shall comply with the instructions of the Captain of the Port (COTP) or designated on-scene representative, consisting of commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed by the COTP's designated on-scene representative.

(3) Entry into the safety zone is prohibited unless authorized by the COTP or his designated on-scene

representative. Any persons desiring to enter the safety zone must contact the designated on-scene representative on VHF channel 16 (156.800 MHz) and receive permission prior to entering.

(4) If permission is granted to transit within the safety zone, all persons and vessels must comply with the instructions of the designated on-scene representative.

(5) The COTP will notify the maritime and general public by marine information broadcast during the period of time that the safety zones are in force by providing notice in accordance with 33 CFR 165.7.

(d) Penalties. Persons and vessels violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: June 11, 2012

J. A. Fosdick

Captain, U.S. Coast Guard
Commander, Sector Anchorage

[FR Doc. 2012-17223 Filed 07/16/2012 at 8:45 am; Publication Date: 07/17/2012]